

Remarks/Arguments

Claims 1 – 27 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks. Claims 1, 9 – 11, 25, and 27 have been amended. Claims 28 – 31 are newly presented for a first examination.

In the outstanding Office Action (“the February 16 Office Action”), the Examiner rejected claims 1 – 12 and 14 – 27 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,499,626 to Julius (hereinafter, “Julius”) in view of U.S. Patent No. 6,766,919 to Huang et al. (hereinafter, “Huang et al.”); and rejected claim 13 under 35 U.S.C. 103(a) as being unpatentable over Julius in view of Huang et al., and further in view of U.S. Patent No. 6,394,298 to Zaidman (hereinafter, “Zaidman”).

By this Response and Amendment, claims 1, 25, and 27 have been amended to clarify the subject matter regarding which protection is sought; claims 9 – 11 have been amended to correct typographical errors; claims 28 – 31 have been added, and the rejection under 35 U.S.C. 103 is traversed.

Support for the amendments to claims 1, 25, and 27 may be found, *inter alia*, in the figures; on page 7, lines 28-30; on page 5, lines 9-11; and, on page 6, lines 1-2. New claim 28 is supported by the original claims 1, 25, 27. New claims 29-31 are supported by the figures, all of which show the dispensing aperture having a periphery, part of which is comprised on the corresponding lid.

Therefore, it is respectfully submitted that the above amendments do not introduce any new matter to this application within the meaning of 35 U.S.C. 132.

Rejection under 35 U.S.C. 103(a)

The Examiner rejected claims 1 – 12 and 14 – 27 as being unpatentable over Julius in view of Huang et al, and rejected claim 13 as being unpatentable over Julius in view of Huang et al., and further in view of Zaidman.

Response

Reconsideration and withdrawal of the rejection is respectfully requested since all of the features of the presently claimed invention are not disclosed, taught or suggested in the cited prior art combination.

To establish a *prima facie* case of obviousness, the Examiner must establish: (1) that some suggestion or motivation to modify the references exists; (2) a reasonable expectation of success; and (3) that the prior art references teach or suggest all of the claim limitations. *Amgen, Inc. v. Chugai Pharm. Co.*, 18 USPQ2d 1016, 1023 (Fed. Cir. 1991); *In re Fine*, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988); *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970).

Claims 1 – 12 and 14 – 27

The Examiner rejected claims 1 – 12 and 14 – 27 as being unpatentable over Julius in view of Huang et al.

Claim 1 has been amended, and now recites a “dispenser for a tissue package, said dispenser comprising a tissue dispensing aperture and a manipulating opening different from said dispensing aperture, both opening into a tissue-containing space of the package; said tissue dispensing aperture is sized for dispensing one tissue at a time while separating a duty tissue from a successive tissue; and further comprising *a flap for normally closing said manipulating opening while maintaining open said*

dispensing aperture, and for selectively opening said manipulating opening to allow introduction of a user's fingers into the tissue-containing space, wherein at least a portion of said dispensing aperture is comprised on said flap, and wherein said tissue dispensing aperture and the manipulating opening are coverable." (Emphasis added)

Claim 25 has been amended, and now recites "A rigid cover engagable with a tissue box, said cover fitted with a dispenser comprising a tissue dispensing aperture and a manipulating opening different from said dispensing aperture, both opening into a tissue-containing space of the box; said tissue dispensing aperture is sized for dispensing one tissue at a time while separating a duty tissue from a successive tissue; and further comprising *a flap for normally closing said manipulating opening while maintaining open said dispensing aperture, and for selectively opening said manipulating opening to allow introduction of a user's fingers into the tissue-containing space, wherein at least a portion of said dispensing aperture is comprised on said flap*, and wherein said tissue dispensing aperture and the manipulating opening are covered by a lid." (Emphasis added)

Claim 27 has been amended, and now recites a "tissue package comprising a dispenser fitted with a tissue dispensing aperture and a manipulating opening different from said dispensing aperture, both opening into a tissue-containing space of the package; said tissue dispensing aperture is sized for dispensing one tissue at a time while separating a duty tissue from a successive tissue; and further comprising *a flap for normally closing said manipulating opening while maintaining open said dispensing aperture, and for selectively opening said manipulating opening to allow introduction of a user's fingers into the tissue-containing space, wherein at least a portion of said dispensing opening is comprised on said flap*, and wherein said tissue dispensing aperture and the manipulating opening are covered by a lid." (Emphasis added).

The Examiner cited the Julius '626 patent in combination with the Huang et al. '919 patent as rendering the presently claimed invention obvious. The Julius '626 patent is directed toward a dispenser with at least one larger aperture (8) and a smaller aperture (9) entirely separated from one another by a bridge portion of a recess. The larger aperture allows articles to be grasped from above, and then thrust up and partially extended through the smaller aperture. The Huang et al. '919 patent is drawn to a flexible orifice for pop-up style dispensing, and describes a flexible rubber-like sheet (20) with a continuous slit.

Neither Julius nor Huang teaches "a flap for normally closing [the] manipulating opening while maintaining open [the] dispensing aperture." The Examiner notes in the February 16 Office Action that "[t]o provide Julius' openings for a normally closed flap would be obvious in view of the teachings of Huang's use of the flap 20 having the normally closed ends 52 in a normally closed state..." Applicants submit that, insofar as element 20 of Huang is a "flap," it is incapable of "closing [a] manipulating opening" such as those of Julius "while maintaining open [a] dispensing aperture" as recited in amended claims 1, 25, and 27. In particular, if element 20 of Huang were to be placed over the larger aperture (8) of Julius and thereby close it, it would fail to maintain open the original dispensing aperture (9) of Julius, which is separate from the larger aperture (8) (see for example Julius, lines 6, 7 of the abstract; column 7, lines 36 to 47; and in particular column 10, lines 10, 11). Alternatively, if the large aperture (8) of Julius were to be formed within element 20 of Huang, the resulting structure would fail to be a "flap for normally closing [the] manipulating opening" (Present application, claims 1, 25, and 27) as the manipulating openings would be disposed in the "flap" itself.

Further, and again insofar as element 20 of Huang is a "flap," neither Julius nor Huang

teaches a “flap...for selectively opening a manipulating opening to allow introduction of a user’s fingers into the tissue-containing space, wherein at least a portion of said dispensing opening is comprised *on said flap*.” As described above, the dispensing aperture (9) of Julius is an entirely separate structure from the larger aperture (8), prior to the addition of any “flap.” If element 20 of Huang were to be placed over the larger aperture (8) of Julius, it would fail to cover the dispensing opening (9) which is not comprised on the flap. Alternatively, if the large aperture (8) of Julius were to be formed within element 20 of Huang, the resulting structure would not selectively open a manipulating opening, as the manipulating opening would therefore be comprised on the flap.

Further still, Applicants submit that there is no motivation to combine the prior art references. Since Julius teaches against even joining the two openings, let alone having one opening to do both functions (insisting rather on “entirely” separate openings), there is no motivation to combine Julius with Huang et al., which teaches a single opening. Applicants submit that even if the two references were to be combined, the combination would not yield the present invention as claimed. If the large openings (8) of Julius should be closed by the slit sheet of Huang in such a combination, then according to Huang the slit would be used to manipulate the sheets to come out of the manipulation opening, rather than the dispensing opening, which is contrary to Julius – see for example column 7, lines 8 to 15.

On the other hand, an argument cannot simply ignore the dispensing function of Huang, and that, in the proposed prior art combination, the opening of the dispenser of Huang would be used to manipulate the tissues to pass through the regular dispensing opening (9) of the dispenser of the Julius ‘626 patent. In the first place, doing so would be an improper combination of the two references as already discussed. Furthermore, the resulting combination would have three dispensing

openings, two in the form of slits on the large openings, plus the regular dispensing opening.

Thus, in summary, for at least the reason that the prior art does not disclose, teach or suggest the combination of features of the presently claimed invention including: 1) the dispensing aperture and manipulation opening being different one from another, i.e., they do not constitute the same opening (the Huang '919 patent teaches against this feature); 2) the flap is for normally closing the manipulating opening while maintaining open said dispensing aperture; and 3) at least a portion of the dispensing opening is comprised on the flap, the presently claimed invention is not rendered obvious by the cited prior art. Specifically, if the Julius '626 patent and the Huang '919 patent were to be combined such a combination would result in a dispenser having a pair of large apertures (8) each of which is covered by a "flap" in the form of the rubber like sheets (with a slit) of the Huang reference. While such "flaps" would comprise the dispensing opening (of Huang), such a dispensing opening would also be concurrently a manipulation opening, and not result in a situation where the dispensing and manipulation openings are different one from another; in contrast to the presently claimed invention.

On the other hand, assuming that such Huang flaps are provided to the larger apertures (8) of Julius as closeable manipulation openings only, being separate from the dispensing aperture (9) of Julius, this would have no effect on the spatial relationship between the larger apertures (8) (i.e., the closeable manipulation opening) and dispensing aperture (9). The dispensing aperture (9) would still remain in the bridge portion of the recess (7), and this would still remain totally unconnected with respect to the larger apertures (8) and thus to the "Huang flaps" (or any other lid) that may be placed over each of the large apertures (8). Thus, the combination of references does not disclose nor suggest that a part of the dispensing aperture (9) is or should be comprised in the flap that closes the

larger aperture (8), in contrast to the presently claimed invention.

Said differently, it is to be noted that according the Julius reference, the dispensing opening (9) is not just different to, but is actually separate from the manipulating opening (8) (see for example lines 6, 7 of the abstract; column 7, lines 36 – 47; and in particular column 10, lines 10, 11 (claim 1)). It is also to be noted that the sheets of the Huang reference are each used for covering an opening, and there is no reason to believe that the “Huang flaps” should extend beyond the corresponding manipulation opening (8) (in this combination of references), less so to the extent that such a flap should now comprise a portion of the dispensing opening (9), in contrast to feature 3 above. There is even less reason to believe that even if the Huang flap were to extend beyond the opening (8) to comprise part of the dispensing opening (9) that the dispensing opening (9) should still be open when the manipulation opening (8) is closed by the same “Huang flaps,” in contrast to the presently claimed subject matter.

Accordingly, even if the two references were to be combined, such a combination would still not yield the structure claimed in amended claims 1, 25, and 27 nor in the dependent claims.

Therefore, Applicants respectfully submit that the combination of Julius and Huang does not disclose, teach or suggest all of the claimed features of the independent claims, and thus does not render the presently claimed invention obviousness. Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the rejections to claims 1, 25, and 27, and to those claims depending therefrom.

Claim 13

The Examiner rejected claim 13 as being unpatentable over Julius in view of Huang et al.,

and further in view of Zaidman.

The arguments above with respect to Julius and Huang et al. are incorporated by reference.

Zaidman discloses a dispensing cover for a container accommodating an article to be dispensed. Applicants submit that Zaidman fails to cure the deficiencies with respect to Julius and Huang et al., as it does not disclose, teach, or suggest “a flap for normally closing [the] manipulating opening while maintaining open [the] dispensing aperture,” and moreover does not disclose, teach, or suggest a “flap...for selectively opening a manipulating opening to allow introduction of a user’s fingers into the tissue-containing space, wherein at least a portion of said dispensing opening is comprised on said flap.” Thus, addition of Zaidman to the cited prior art combination does not render the presently claimed invention obvious since the combination of all of the references fails to show all of the claimed features of claim 1, from which claim 13 depends by way of claim 2.

Accordingly, Applicants respectfully request that the Examiner reconsider and withdraw the outstanding rejection to claim 13.

Claims 28 – 31

By this response and amendment, Applicants present new claims 28 – 31 for a first examination. Applicants submit that these new claims help to further define the present inventive subject matter over the cited prior art as the claims depend from claims 1, 26, and 27, respectively.

CONCLUSION

In light of the foregoing, Applicants submit that the application is now in condition for

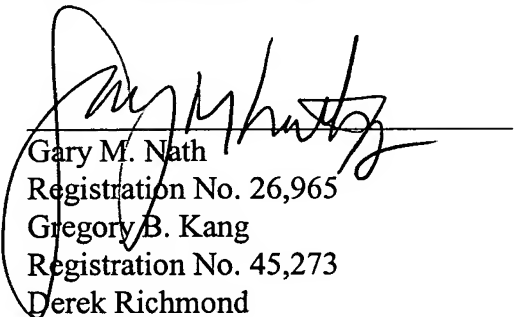
allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,
NATH & ASSOCIATES PLLC

Date: May 15, 2006
NATH & ASSOCIATES PLLC
112 South West Street
Alexandria, VA 22314
(703) 548-6284

By:



Gary M. Nath
Registration No. 26,965
Gregory B. Kang
Registration No. 45,273
Derek Richmond
Registration No. 45,771
Customer No. 20529